

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BOARD OF PATENT APPEALS
AND INTERFERENCES**

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN DOYLE GANTT

Appeal No. 2003-1886
Application 09/186,270

ON BRIEF

Before JERRY SMITH, DIXON and BARRY, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1, 4, 14, 15, 21, 24, 25, 28, 38, 39, 45, 48-51 and 65-68. Claims 2, 3, 5-13, 16-20, 22, 23, 26, 27, 29-44¹, 46, 47, 52-64 and 69-81 have been indicated

¹ The examiner's answer indicates that claims 38 and 39 contain allowable subject matter [answer, page 2] and also rejects claims 38 and 39 [answer, pages 4-5]. We will consider the rejection of these claims in this decision.

to contain allowable subject matter.

The disclosed invention pertains to a method and apparatus for interactively manipulating and displaying presumptive relationships between graphic objects. More particularly, the invention has use in the field of graphical user interfaces. For example, a selected object can float with a cursor and the selected object can align, jump or cling to an underlying graphic object on the interface based on the proximity of the cursor to the underlying graphic object.

1. A method of operating a computer aided design system in presumptive mode, comprising the steps of:

moving a selected graphic object relative to a graphic pointing symbol;

determining when the selected graphic object is within a predetermined proximity of an underlying graphic object;

manipulating the selected graphic object into a geometric relationship with the underlying graphic object according to predetermined geometric rules; and

dynamically updating the geometric relationship based on movement of the graphic pointing symbol while the graphic pointing symbol remains within the predetermined proximity of the underlying graphic object.

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The examiner relies on the following references:

| | | |
|----------------------------|-----------|--|
| Eckart | 5,408,606 | Apr. 18, 1995 (filed Jan. 07, 1993) |
| Venolia | 5,463,722 | Oct. 31, 1995 (filed July 23, 1993) |
| Rostoker et al. (Rostoker) | 5,623,418 | Apr. 22, 1997 (filed June 14, 1993) |

Claims 1, 4, 21, 25, 28, 45, 48-51 and 65-68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Venolia taken alone. Claims 14, 15, 38 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Venolia in view of Eckart. Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Venolia in view of Rostoker.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's

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rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.,

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776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness.

Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444

(Fed. Cir. 1992). If that burden is met, the burden then shifts

to the applicant to overcome the prima facie case with argument

and/or evidence. Obviousness is then determined on the basis of

the evidence as a whole and the relative persuasiveness of the

arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ

685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472,

223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d

1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments

actually made by appellant have been considered in this decision.

Arguments which appellant could have made but chose not to make

in the brief have not been considered and are deemed to be waived

[see 37 CFR § 1.192(a)].

We consider first the rejection of claims 1, 4, 21, 25,

28, 45, 48-51 and 65-68 based on the teachings of Venolia taken

alone. Appellant has indicated that claims 1, 4, 21, 25, 28 and

45 will stand or fall together as a first group, and claims 48-51

and 65-68 will stand or fall together as a second group [third supplemental brief, page 3]. Therefore, we will consider this rejection with respect to claims 1 and 48 as representative of all the claims subject to this rejection. The examiner has indicated how he finds the invention of these claims to be obvious over the teachings of Venolia [answer, pages 3-5].

With respect to representative, independent claim 1, appellant argues that Venolia merely describes an alignment field gradient which emanates from objects, that the relationship between the objects in Venolia is not based on the position of the pointing symbol relative to the underlying object, and that Venolia fails to teach the claimed invention because the relationship between the objects in Venolia is not dynamically updated while the cursor remains within a predetermined proximity of the underlying object [third supplemental brief, pages 4-5].

With respect to appellant's first argument, the examiner essentially responds that the argument is not relevant to the claimed invention. With respect to the second argument, the examiner responds that since the cursor in Venolia actually moves the first object, then the first object is being moved relative to the cursor. With respect to the third argument, the examiner responds that Figure 5 of Venolia shows the position of object P

dynamically changing with respect to object Q when the cursor is within a predetermined of object Q [answer, pages 7-11].

We will sustain the examiner's rejection of claim 1 and of claims 4, 21, 25, 28 and 45 which stand or fall with claim 1. We agree with the examiner's response to appellant's first argument. We also agree with the examiner that the movement of object P in Venolia with respect to object Q as shown in Figure 5 meets the invention of claim 1. Although appellant probably read claim 1 as requiring a dynamic geometric relationship as shown in Figures 3D-3F or Figures 4A-4C of their application, claim 1 is not so limited. Venolia teaches that when the cursor pulls object P in Figure 5 within a predetermined distance of object Q, object P begins to move towards object Q and rotates to align itself with object Q. The cursor (graphic pointing symbol) remains within the predetermined proximity of object Q during this time. Therefore, the geometric relationship between object P and object Q of Venolia is dynamically updated while the cursor remains within the proximity of object Q. We are of the view that the broadest reasonable interpretation of claim 1 is met by the operation of Venolia's Figure 5 when considered with the corresponding description of Figure 5 in the document.

With respect to representative, independent claim 48, appellant argues that Venolia does not teach or suggest the claim limitations directed to displaying the first graphic object on a computer followed by displaying at least one point of interest when a pointing symbol is within a predetermined proximity of the first graphic object. Specifically, appellant argues that Venolia does not have any points of interest and teaches a relationship between two objects rather than between a pointing symbol and an object [third supplemental brief, page 5].

The examiner responds that the claimed first graphic object corresponds to the first graphic object of Venolia, and the claimed point of interest corresponds to the second object of Venolia. The examiner notes that if the cursor is moving the first object, then it must be touching the first object. The examiner also asserts that the claim does not exclude all points of an object from being a point of interest [answer, pages 13-15].

We will sustain the examiner's rejection of claim 48 and of claims 49-51 and 65-68 which stand or fall therewith. We agree with the examiner that his broad interpretation of claim 48 is reasonable and this interpretation is met by the teachings of Venolia. Specifically, the examiner has read the claimed graphic

object and the point of interest on the first and second objects of Venolia respectively. When the pointing symbol of Venolia is within a predetermined proximity of the first graphic object, the computer displays a relationship similar to that shown in Venolia's Figure 5. As noted by the examiner, all of the second object in Venolia can be considered points of interest within the meaning of claim 48, and the claim does not preclude the points of interest (second object) also being displayed when the pointing symbol is not within the predetermined distance. In other words, the claim does not recite that the points of interest are only displayed when the pointing symbol is within the predetermined distance. Venolia teaches the invention as claimed which is the first object (first graphic object) and the second object (points of interest) are both displayed when the pointing symbol is within a predetermined distance of the first graphic object (as well as at other times).

We now consider the rejection of claims 14, 15, 38 and 39 based on the teachings of Venolia and Eckart. Claims 14 and 38 stand or fall together as a first group, and claims 15 and 39 stand or fall together as a second group [brief, page 3]. The examiner has indicated how he finds the invention of these claims to be obvious over the applied prior art [answer, pages 5-6].

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Appellant argues that Eckart describes how data that lies outside a viewport can be clipped, but not that the manipulation of a selected graphic object into a geometric relationship with an underlying object according to predetermined geometric rules performs such an operation [first brief, page 5]. The examiner responds that appellant's argument relies on limitations of claim 1 for patentability. The examiner further explains how he reads the invention of claims 14 and 15 on the teachings of Venolia and Eckart and why the claimed invention would have been obvious to the artisan [answer, pages 11-13].

We will sustain the examiner's rejection of claims 14, 15, 38 and 39 for the reasons noted by the examiner in the answer. The argued limitations incorporated from independent claim 1 do not provide patentability for reasons discussed above. We also find that the examiner has presented a prima facie case of obviousness which has not been rebutted by appellant. Appellant has not pointed out any flaws in the examiner's analysis of Eckart or in the examiner's reasoning in combining the teachings of Venolia and Eckart.

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We now consider the rejection of claim 24 based on the teachings of Venolia and Rostoker. The examiner has explained how he finds the invention of claim 24 to be obvious over the applied prior art [answer, pages 6-7]. This rejection is sufficient to establish a prima facie case of obviousness. Appellant has not specifically responded to this rejection, but instead, they have indicated that claim 24 stands or falls with claim 1 [brief, page 3]. Since the examiner has established a prima facie case of obviousness, and since appellant has not rebutted this prima facie case of obviousness, we sustain the examiner's rejection of claim 24.

In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1, 4, 14, 15, 21, 24, 25, 28, 38, 39, 45, 48-51 and 65-68 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


Jerry Smith
JERRY SMITH

JERRY SMITH
Administrative Patent Judge

[Signature]

JOSEPH L. DIXON
Administrative Patent Judge

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